

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN ANNE LANGAN,

Plaintiff-Appellant,

v

PAUL DONALD RICHARDSON,

Defendant-Appellee.

UNPUBLISHED

September 16, 2014

No. 320959

Kalamazoo Circuit Court

LC No. 2012-006640-DM

Before: SHAPIRO, P.J., and WHITBECK and STEPHENS, JJ.

PER CURIAM.

Plaintiff mother Kathleen Anne Langan appeals as of right the March 18, 2014 divorce judgment ordering Langan to share joint legal and physical custody of the minor child with defendant father Paul Donald Richardson and ordering Richardson to pay Langan \$1,800 in attorney fees. We affirm in part, reverse in part, and remand the case to the trial court for further proceedings.

Langan argues that the trial court erred when it failed to determine the existence of an established custodial environment before reaching a child custody determination in this case. In regard to child custody and parenting time, all orders and judgments of the circuit court are to be affirmed unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

“Whether an established custodial environment exists is a question of fact that the trial court must address before it makes a determination regarding” child custody. *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000). Additionally, a determination regarding the existence of an established custodial environment must be made when addressing parenting time. *Pierron v Pierron*, 486 Mich 81, 86; 782 NW2d 480 (2010). In this case, the trial court did not make a finding in regard to whether an established custodial environment existed. The trial court’s failure to make a finding in regard to whether an established custodial environment existed was clear legal error. See *Bowers v Bowers*, 190 Mich App 51, 54; 475 NW2d 394 (1991). And, because that error was not harmless, we remand this case to the trial court for a determination whether an established custodial environment existed in this case, and for new best-interest findings regarding child custody and parenting time using the applicable standard of review. *Kessler v Kessler*, 295 Mich App 54, 62-63; 811 NW2d 39 (2011). In reaching those

findings, the trial court should use “up-to-date information” and “any other changes in circumstances arising *since* the trial court’s original custody order.” *Id.* at 63 (emphasis added).

Langan also argues that the trial court abused its discretion when it denied Langan attorney fees based on Richardson’s unsubstantiated reports to child protective services (CPS) and the police. “We review a trial court’s grant or denial of attorney fees for an abuse of discretion. Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error, but questions of law are reviewed *de novo*.” *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005) (internal citations omitted).

In domestic relations cases, “an award of legal fees is authorized where the party requesting payment of the fees has been forced to incur them as a result of the other party’s unreasonable conduct in the course of the litigation.” *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). In this case, the trial court granted Langan \$1,800 in attorney fees because of Richardson’s failure to provide discovery and failure to attend a hearing, but held that Langan was not entitled to attorney fees in regard to Richardson’s unsubstantiated reports to CPS and the police. On appeal, Langan argues that she was entitled to an additional \$2,400 in attorney fees because Richardson’s multiple unsubstantiated reports to CPS and the police constituted misconduct on Richardson’s part that caused Langan to incur attorney fees. We disagree.

The CPS investigator that handled Richardson’s reports against Langan testified that Richardson’s communications with CPS were appropriate in this case. And, Langan does not explain how Richardson’s reports to the police constituted unreasonable conduct on Richardson’s part. In sum, Langan has not shown that Richardson’s communications with CPS and the police constituted “unreasonable conduct.” *Id.* Thus, we conclude that the trial court did not abuse its discretion in denying Langan attorney fees based on Richardson’s reports to CPS and the police. *Reed*, 265 Mich App at 164 (review is for an abuse of discretion).

The trial court’s holdings in regard to child custody and parenting time are reversed and this case is remanded to the trial court for a determination whether an established custodial environment existed in this case, and for new best-interest findings regarding child custody and parenting time using the applicable standard of review. In light of this decision, we find it unnecessary to address the additional arguments of Langan regarding the trial court’s determination of legal custody and evaluation of best interests factors. The trial court’s grant of \$1,800 in attorney fees to Langan is affirmed. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Cynthia Diane Stephens